

**UNITED STATES DISTRICT COURT
FOR DISTRICT OF MASSACHUSETTS**

DAVID HOUSE,

Plaintiff,

v.

JANET NAPOLITANO, in her official capacity as
Secretary of the U.S. Department of Homeland
Security; ALAN BERSIN, in his official capacity as
Commissioner, U.S. Customs and Border
Protection; JOHN T. MORTON, in his official
capacity as Assistant Secretary of Homeland
Security for U.S. Immigration and Customs
Enforcement,

Defendants.

Case No.
1:11-cv-10852-DJC

**PLAINTIFF’S UNOPPOSED MOTION FOR LEAVE TO FILE SURREPLY
IN OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS OR IN THE
ALTERNATIVE, FOR SUMMARY JUDGMENT**

1. Plaintiff David House respectfully seeks leave of the Court to file the attached Surreply in Opposition to Defendants’ Motion to Dismiss, or in the Alternative, for Summary Judgment, in order to respond to new arguments in Defendants’ reply brief (“Reply,” Docket No. 20).

2. The parties had previously agreed on a briefing schedule—approved by this Court—which included Reply and Surreply Briefs (Docket No. 8).

3. On August 24, 2011, the Court granted Plaintiff’s Unopposed Motion for Extension of Time to File Response/Reply (Docket No. 13) and ordered that the parties seek leave of the Court to file a Reply and Surreply.

4. On October 28, 2011, the Court granted Defendants' Unopposed Motion for Leave to File a Reply Brief (Docket No. 19).

5. Plaintiff now seeks leave to file the attached Surreply. A Surreply is appropriate because Defendants incorporate new arguments in their Reply. *See Klein v. MHM Corr. Servs.*, 2010 WL 3245291,*2 (D. Mass. Aug. 16, 2010). For example, Defendants argue for the first time in their Reply brief that only ICE agents or those who have worked for the government are qualified to opine on the reasonableness of the length of time Defendants kept Mr. House's electronic devices, and that Plaintiff does not have a claim for improper dissemination and retention.

6. Defendants do not oppose this motion.

WHEREFORE Plaintiff asks that the Court grant this motion and enter an Order giving Plaintiff leave to file the attached Surreply brief in response to Defendants' Motion.

DAVID HOUSE
By his attorneys,

/s/ Catherine Crump
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December 5, 2011

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I, Catherine Crump, hereby certify that on December 1, 2011, I conferred with Defendants' counsel, Diane Kelleher, by email. Defendants do not oppose this motion.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Catherine Crump
Catherine Crump
December 5, 2011